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13 09-27969

14 **IN THE UNITED STATES BANKRUPTCY COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Benny Leland Cotter and Judy Webster Cotter

17 No. 2:09-bk-23475-SSC

18 Debtors.

19 Chapter 11

20 U.S. Bank, National Association

21 OBJECTION TO CHAPTER 11 PLAN AND
22 DISCLOSURE STATEMENT

23 Secured Creditor,

24 vs.

25 Benny Leland Cotter and Judy Webster Cotter,
26 Debtors; Office of the US Trustee, Trustee.

27 Respondents.

28 U.S. Bank, National Association, a secured creditor, by its attorneys, TIFFANY & BOSCO, P.A.,
29 hereby objects to the proposed Chapter 11 Plan and Disclosure Statement filed by the Debtors. U.S. Bank,
30 National Association, files this response to the proposed 11 Plan of the Debtors. This Objection is
31 supported by the following Memorandum of Points and Authorities.

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33

1 Dated this 12th day of April, 2010.
2
3

4 Respectfully submitted,
5

6 TIFFANY & BOSCO, P.A.
7

8 By /s/ MSB #010167
9 Mark S. Bosco
10 Leonard J. McDonald
11 Attorneys for Movant
12

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 The Chapter 11 Plan provides for an impermissible cram down of U.S. Bank, National Association's lien
15 interest on the real property commonly known as 3834 E. Clovis Ave., Mesa AZ 85206.
16

17 U.S. Bank, National Association objects to the value of the subject real property as Debtors
18 arbitrarily proposes that the fair market value of Secured Creditor's claim is \$270,000.00 without
19 providing any legal or factual authority for such capricious treatment. Such modification is simply not
20 supported by the Bankruptcy Code or the facts of this case. The proposed Plan appears to attempt to
21 cram-down Secured Creditor's claim by scheduling or providing for a total claim to Secured Creditor in
22 the amount of \$270,000.00, while in fact the total claim owed to Secured Creditor is in the amount of
23 \$309,647.68. The Plan proposes monthly payments of \$1783.10 per month with a 5.5% interest rate.
24 The remaining portion of the claim, approximately \$42,433.00, is to be treated as a General Unsecured
25 Claim. The Plan proposes to pay the secured claim at an interest rate of 5.5%, which is not reasonable
26 under current conditions and in light of the Debtors' past non-payment history. The Plan is not
confirmable because it violates 11 USC Section 1123(b)(5) by attempting to modify U.S. Bank, National
Association's rights as a secured creditor holding a lien position secured by the debtors principle
residence. 11 USC Section 1123(b)(5) provides in part:

1 Subsection (B) Subject to subsection (a) of this section, a Plan may...

2
3 Subsection (5) Modify the rights of holders of secured claims, other than a
4 claim secured only by security interest in real property that is the Debtors
5 principle residence...

6 Because the Plan attempts to modify the rights of U.S. Bank, National Association's claim secured by
7 a lien interest in the property, which is the Debtor's personal residence, the Plan violates 11 USC
8 Section 1123(b)(5) and therefore is not confirmable pursuant to 11 USC 1129 (a)(1).

9 Further, Secured Creditor objects to the proposed sale terms as provided in Debtors' "Plan" to the
10 potential future sale of the property. In the instant, Debtors' cannot provide any escrow documents to
11 assure Movant that the future sale of the property will provide a complete and full payoff of principal,
12 interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to, advances
13 made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid off. Nor
14 can the Debtors' provide evidence of the property value over a five year period. Currently, Secured
15 Creditor is 100% secured and cannot agree in the present what the property status could be in the future.
16 At such time as Debtors can provide Secured Creditor with documentation which indicates a full payoff of
17 principal, interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to,
18 advances made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid
off, Secured Creditor will re-evaluate their position at that time.

19 CONCLUSION

20 Any Chapter 11 Plan proposed by the Debtor(s) must provide for and eliminate the Objections
21 specified above in order to be reasonable and to comply with applicable provisions of the Bankruptcy
22 Code. Secured Creditor respectfully requests that the confirmation of the Chapter 11 Plan as proposed
23 by the Debtor(s) be denied, or in the alternative, be amended to provide for full payoff of the arrearages
24 owed to the Secured Creditor.

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26 ///

1 WHEREFORE, secured creditor prays as follows:

2 (1) That the 11 Plan be denied.

3 (2) For such other relief as this Court deems proper.

4 DATED this 12th day of April, 2010.

5 Respectfully submitted,

6 TIFFANY & BOSCO, P.A.

7 BY /s/ MSB # 010167

8 Mark S. Bosco

9 Leonard J. McDonald

10 Attorneys for Secured Creditor

11 COPY of the foregoing mailed

12 April 12, 2010 to:

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16 Debtors

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25 Phoenix, AZ 85003
26 Trustee

27 By: Nicole E. Harrison